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Attorneys for Defendants State of Oregon, Oregon State Police, Governor Kate Brown, Travis Hampton, Trooper #1 and Trooper #2

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

D. JEANETTE FINICUM; THARA  
TENNEY; TIERRA COLLIER; ROBERT  
FINICUM; TAWNY CRANE; ARIANNA  
BROWN; BRITTNEY BECK; MITCH  
FINICUM; THOMAS KINNE; CHALLICE  
FINCH; JAMES FINICUM; DANIELLE  
FINICUM; TEAN FINICUM; and the  
ESTATE OF ROBERT LAVOY FINICUM,

Plaintiffs,

v.

UNITED STATES OF AMERICA;  
FEDERAL BUREAU OF INVESTIGATION;  
BUREAU OF LAND MANAGEMENT;  
DANIEL P. LOVE; SALVATORE LAURO;

Case No. 2:18-cv-00160-SU

STATE DEFENDANTS' RESPONSE TO  
PLAINTIFFS' OBJECTIONS TO FINDINGS  
AND RECOMMENDATION

(Oral Argument Requested)

GREG T. BRETZING; W. JOSEPH  
 ASTARITA; SPECIAL AGENT BM;  
 MICHAEL FERRARI; STATE OF OREGON;  
 OREGON STATE POLICE; TRAVIS  
 HAMPTON; TROOPER 1 TROOPER 2;  
 KATHERINE BROWN; HARNEY  
 COUNTY; DAVID M. WARD; STEVEN E.  
 GRASTY; and the CENTER FOR  
 BIOLOGICAL DIVERSITY,

Defendants.

Only the last 13 lines of plaintiffs' 35-page Objections ("Objection No. 12") relate to the state defendants. This response addresses only that portion of plaintiffs' document.

Plaintiffs' Second Amended Complaint alleges a Section 1983 claim against Gov. Kate Brown for violation of Mr. Finicum's Fourth Amendment right to be free of the use of excessive force. Gov. Brown was not present at the time of the shooting. The state defendants moved to dismiss as to Gov. Brown, because she was not an integral participant in the Troopers' decision to use deadly force. The Findings and Recommendation recommend dismissal as to Gov. Brown.

Citing *Monell v Dept. of Soc. Services of City of New York*, 436 US 658 (1978), plaintiffs argue Gov. Brown is not entitled to immunity. Plaintiffs' position is nonsense. The Magistrate Judge recommended the excessive force claim against Gov. Brown be dismissed because she was not present and did not participate in the Troopers' decision to pull the trigger. The Findings and Recommendation do not address immunity. The *Monell* case has to do with municipal liability under Section 1983, not an excessive force claim against a state's governor based upon a decision by officers of the state's police force.

The court should accept the recommendation of the Magistrate Judge as to the excessive force claim against Gov. Brown.

DATED February 5, 2021.

Respectfully submitted,

ELLEN F. ROSENBLUM  
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s/ James S. Smith

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